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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,478	01/23/2004	Jennifer Appel	020208-00200	7001

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LOCKE LIDDELL & SAPP LLP
600 TRAVIS
3400 CHASE TOWER
HOUSTON, TX 77002-3095

EXAMINER	
ALIMENTI, SUSAN C	
ART UNIT	PAPER NUMBER
3644	

DATE MAILED: 07/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/763,478	Applicant(s) APPEL, JENNIFER	
	Examiner Susan C. Alimenti	Art Unit 3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 12-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Handwritten signature/initials.

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of group I in the reply filed on 5/10/05 is acknowledged. The traversal is on the grounds that claim 12, as amended, is now dependant on claim 1, therefore, "[t]he preamble duly restricts the product used in conjunction with the claims of Group I." This is not found persuasive because the preamble of claim 12 does not change the fact that the plant container has a materially different use in the art, as stated in the previous office action. Further, such an amendment does not preclude additional search required by the method limitations.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 12-16 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected group II, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 5/10/05.

Drawings

3. The drawings are objected to because the drawings contain textual description and explanations; such should be removed form the drawings and incorporated in the specification. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be

Art Unit: 3644

removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims recite the limitation "the container," however, there is insufficient antecedent basis for this limitation in the claim. If the phrase "the container" is meant to indicate "the plant container" the claims should be amended appropriately.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Donhauser (USPN 4,371,995).

Donhauser discloses a plant container 52, adapted to retain soil, having a side 56 and bottom 54. A pump landing 12 is coupled to the plant container 52 and has a surface defined by lip 28 that is higher than the bottom 54 of plant container 52. The pump landing is sealing separated from container 52 and accessible from an exterior by lifting container 52.

Regarding claim 2, a pump 74 is coupled to the pump landing 12.

Regarding claim 3, a water fountain spout 84 is coupled to the pump via conduit 80 and is adapted to spray water from the pump at a level above a water level in the plant container 52

Regarding claims 4 and 5, the pump 74 has a power cord 88 that passes through a channel that is *coupled* to the plant container 52.

Regarding claim 6, a valve 62 is mounted in the hollow cavity created by the pump landing 12. Said valve 62 is fluidly coupled to the interior portion of the plant container 52 and another port accessible on the exterior of said plant container 52. *Donhausen*, col.2, lns.63-64.

Regarding claim 7, conduit 80 is coupled to container 52 and supplies water to said container.

Art Unit: 3644

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Donhausen.
as applied to claims 1-7 above.

Donhausen discloses the claimed invention except a hollow channel 68 is formed on the exterior of plant container 52, not the interior. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form channel 68 on the interior portion of container 52, since it has been held that a mere reversal of the essential working parts of an invention involves only routine skill in the art. In re Einstein, 8 USPQ 167.

Claims 9-11 are rejected similarly as described above.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan C. Alimenti whose telephone number is 571-272-6897. The examiner can normally be reached on Monday-Friday, 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harvey Behrend can be reached on 571-272-6871. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3644

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SCA



TERI PHAM LUU
SUPERVISORY
PRIMARY EXAMINER